IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5646 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARILAL TULSIDAS THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5646 of 2001

MR DM THAKKAR FOR M/S THAKKAR ASSOC. for Petitioner

MR KT DAVE AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under sub-section 2 of Section 3 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 ('the Act' for short), the District Magistrate, Rajkot, vide order dated July 9, 2001, Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the petitioner was dealing in free sale kerosene (white kerosene) and carrying on the activities in the manner prejudicial to the maintenance of supply of commodities essential to the community and public at large and, therefore, the authority found it necessary to detain the petitioner on the grounds stated in the impugned order.

3. As per the grounds of detention, on May 25, 2001, a tanker was intercepted by police personnel and it was found that in that tanker blue kerosene which is meant for distribution to the public at large was being carried unauthorizedly, without any licence or permit. It is also alleged in the said order that the said tanker was sent to Ashapura Traders, Jetpur by the petitioner.

4. The petitioner has challenged the order of detention on various grounds. However, Mr. D.M. Thakkar, learned advocate for the petitioner, has restricted his arguments to the fact that the documents mentioned in para 11 of the representation dated July 17, 2001 sent by the detenu to the District Magistrate, Rajkot have not been supplied to him so far. Therefore, according to him, non-supply of the documents pari passu has seriously prejudiced the right of the detenu of making effective representation and thereby right guaranteed under Article 22 (5) of the Constitution is violatd. He, therefore, contended the continued detention of the petitioner has become illegal and on this sole ground the petition is required to be allowed and the petitioner be set at liberty forthwith.

5. Mr. K.T. Dave, learned AGP who appears for respondent Nos.1 to 3 has opposed this petition by filing reply affidavit shown by P.N. Patel, District Magistrate, Rajkot, and another affidavit sworn by H.C. Kadia, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department. Same way, Ms. Davawala, learned advocate who appears for respondent No.4 has also opposed the petition by filing affidavit in reply sworn by S.L. Meena, Under Secretary to the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. They jointly urged to pass appropriate order in light of the contentions raised in the reply affidavits.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed thereto including the impugned order of detention

and the representation dated July 17, 2001 made by the petitioner to the District Magistrate, Rajkot.

7. On having perusal of the representation dated July 17, 2001 sent by the petitioner to the District Magistrate, the petitioner has in para 11 thereof specifically stated that he has not been supplied with the copy of the documents which were referred to and relied upon in para 2 of the grounds of detention by the detaining authority, that is, (i) copy of the Control Order, 1981, (ii) copy of the Control order, 1993 and (iii) extract of the relevant provisions of Essential Commodities Act, 1955. Moreover, copy of the Control Order, 1977 which is referred to in para 3 is also not supplied. It was further stated that non supply of the documents amounts to non supply of grounds of detention and, therefore , the detenu could not make effective representation and non-supply of the documents pari passu has violated the right guaranteed under Article 22 (5) of the Constitution.

8. On having perusal of the reply affidavits, it is nowhere stated that the authorities have supplied the documents mentioned in para 11 of the representation dated 17.7.2001 so far. It is an admitted position that the detaining authority has not supplied the documents referred to in para 11 of the representation dated July 17, 2001 so far and it has seriously prejudiced the right of the petitioner of making effective representation and therefore the right enshrined under Article 22 (5) of the Constitution is infringed.

9. The Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696 held that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is a constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu in grounds of detention in order that the detenu may make an effective representation immediaetly instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constiution.

10. Similar view is expressed by this Court in the case of Koli Sureshbhai Balabhai Parmar v. District Magistrate, Bhavnagar, 2000 (2) GLH 540. In view of the

judgment of the Supreme Court and this Court, non-supply of the documents pari passu though demanded is violative of Article 22 (5) of the Constitution as it adversely affects the right of the petitioner to make effective represetnation before the authority concerned. On this sole ground continued detention of the petitioner has become illegal and the impugned order of detention is vitiated. Therefore, the petition is required to be allowed and the detenu is required to be set at liberty forthwith.

11. For the foregoing reasons, the continued detention of the detenu has become illegal. Therefore, the petition succeeds and accordingly it is allowed. The impugned order of detention is quashed and set aside. The petitioner detenu is required to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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